

airspace would also be needed where positive control cannot be provided and where the activities would create a hazard for nonparticipating aircraft. The alterations described in this docket would satisfy the restricted airspace requirement.

As proposed herein, R-4807, R-4809 and R-4817 would be designated for joint use. This would permit their temporary return to public use when the using agency has no requirement for them. Furthermore, subdividing R-4807 and redefining R-4808 and R-4809 would simplify the measures required to effect the return by aligning the area boundaries more closely to the airspace actually used for specific testing or training operations.

The Air Force has stated that it will recommend revocation of R-4817 as soon as equipment necessary to control aircraft activities within that airspace has been installed. The R-4817 airspace would then be combined with one or both of the operating areas proposed in Notice No. 76-5 so that flight through the area can be made, subject to the special air traffic rules proposed in the notice. Current Air Force planning indicates that equipment installation will be completed within two years.

These amendments are proposed under the authority of Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on February 27, 1976.

WILLIAM E. BROADWATER,
Chief, Airspace and Air
Traffic Rules Division.

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DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 640]

STANDARD FOR BENEFIT PAYMENT PROMPTNESS

Unemployment Compensation

The United States Department of Labor, Employment and Training Administration, proposes to adopt a regulation for a Benefit Payment Promptness Standard, in a new Part 640 of Title 20, Code of Federal Regulations.

BACKGROUND

The State and Federal partners in the Federal-State unemployment compensation program share responsibility for ensuring that the system is geared to provide the payment of unemployment compensation to eligible individuals as promptly as possible. Prompt payment of unemployment compensation is vital to achieve the basic purposes of the program. Section 303(a)(1) of the Social Security Act requires, as a condition for the certification of payment of administrative grants to a State, that the Secretary of Labor find that the State unemployment compensation law includes

provision for "such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." (Emphasis added.)

All State laws either explicitly contain a corresponding provision or are construed as containing this requirement. Unless some precise interpretation of the phrase "when due" is established, however, there exists no measure of satisfactory performance. The Department of Labor has long considered the prompt payment of unemployment compensation to eligible individuals to be a key element in achieving the major purposes of the program. The Department has issued promptness guidelines over the years, providing States with specific performance objectives.

The interpretation given the phrase "when due" by the United States Supreme Court in "California Department of Human Resources Development v. Java," 402 U.S. 121 (1971), offers no specific test of required promptness. It is clear, however, that the Court, like the Department, considered the prompt payment of unemployment compensation to be of crucial importance. According to the Court, the Congressional intent in establishing the statutory framework of the program was to get "money into the pocket of the unemployed worker at the earliest point that is administratively feasible." The unmistakable thrust of the decision is that payment must be made promptly if the purposes of the program are to be met.

Unemployment Insurance Program Letter No. 1145, issued November 12, 1971, contains guides for implementing the "Java" decision's requirements, but none that specifically require the prompt payment of unemployment compensation.

Payment guidelines, however, had been issued earlier, beginning in 1967, representing the Department's recommendations to the State agencies of specific payment promptness objectives.

The most recent revision of those guidelines, contained in General Administration Letter No. 1504, issued February 7, 1974, recommended that 86 percent of intrastate first payments be made within 14 days of the end of the first compensable week, and that 67 percent of interstate first payments be made within 14 days. These guidelines were issued for State agencies to use in self-appraisal of their performance, along with the prescription that a State should study the reasons for its poor performance and develop a corrective plan of action when performance is more than 20 percent below the specified guidelines.

It seems clear that the fact that the guidelines for prompt benefit payments are recommendations only, and the failure to spell out clearly that promptness in making payments is a Federal law requirement, have been major elements leading to inadequate understanding of the emphasis and priority that must be assigned in the operation of the program

to prompt benefit payments. Unusually heavy work loads and budget constraints have been contributing factors to inadequate performance in recent years.

A number of recent suits in State and Federal courts, brought by claimants who were aggrieved by delays in benefit payments, have highlighted the lack of clear-cut Federal direction in the application of the Federal law to achieve promptness in the payment of unemployment benefits. The actions of the courts in these cases reinforce the Department's view that specific criteria of performance are needed as a basis for determining compliance with the "when due" requirement of section 303(a)(1).

PROPOSED STANDARD

Following the pattern set by the Appeals Promptness Standard established in 1972, a standard is proposed requiring that States provide such administration of the benefit payment process as will reasonably insure payment of unemployment compensation to eligible individuals with the greatest promptness that is administratively feasible.

Criteria for first payments are established which, if met by a State, will constitute substantial compliance with the standard. Any State not meeting the criteria will be required to develop an annual plan of action identifying existing obstacles to promptness, showing how the State will operate during the following year to meet the established criteria, and what changes will be made in processing methods to accomplish its goal. Monitoring of the States' performance, however, will be on a continuing basis to assure that States whose performance does not meet the criteria are taking the steps necessary to improve their performance to the required level.

It is important that the relationship between the standard and the established criteria be fully understood. The standard is a simple requirement of the greatest promptness that is administratively feasible. The criteria serve the purpose of defining what will be accepted as satisfying the standard. A State that meets the criteria will be considered to be satisfying the standard, and, accordingly, be in substantial compliance with the requirement of section 303(a)(1).

If a State fails to meet the criteria, this does not necessarily mean it has failed to satisfy the standard. If the failure is attributable to factors reasonably beyond the State's control and, in light of those factors, the State has done as well as is administratively possible, it will be considered that the standard has been met. If, however, the reasons were not beyond the State's control, remedial action will be sought. The reasons for and the nature of the failure will be evaluated and recommendations will be made for correction and improvement. Notice of and opportunity for a hearing on the withholding of certification of payment of granted funds would be undertaken in the event of failure or refusal to take necessary corrective actions.

PROPOSED RULES

PERFORMANCE CRITERIA

The performance criteria being proposed at this time are interim criteria that will be reviewed during the next several months, with changes to be published by March 1977, effective for fiscal year 1978.

The criteria proposed now are less stringent than the performance objectives incorporated in the 1974 guidelines. The latter were based on experience in the 1960's during periods when workloads were relatively light. In contrast, the proposed standard would be inaugurated during a period when workloads are not at unprecedented levels and are likely to continue unusually high for a protracted period. The proposed criteria, necessarily based on the best judgment available as to what level of performance is realistically attainable, appear more realistic in light of current economic conditions than those described in the 1974 guidelines.

The proposed criteria of substantial compliance with section 303(a) (1) are: 80 percent of intrastate first payments to be issued within 14 days following the end of the first compensable week; 60 percent of interstate first payments to be issued within 14 days of the end of the first compensable week.

First payments mean payments based on initial claims and claims for the first compensable week. The data reported on Form ES-213 provide the data base for determining whether the criteria are met. The report is submitted monthly and is due in the national office of the Employment and Training Administration on the fifteenth of the month following the month to which it relates. The criteria apply to a cumulative percentage for a 12-month fiscal year. The reporting definitions and instructions for the report would not be affected.

The criteria proposed are limited to first payments at this time, although the standard itself will be applicable to all benefit payments. Past studies have shown that the States' performance with respect to first payments is indicative of their performance with respect to subsequent payments. As indicated above, however, the criteria as proposed will be reassessed during the next several months. By then there will have been sufficient opportunity to determine potential State capacity and to consider the impact on time lapse of a number of relevant factors that vary from State to State. At that time a determination will be made of the feasibility of establishing criteria for payment of continued claims as well as payment of first claims. In addition, consideration will be given to determining not only what specific percentages of intrastate and interstate first payments should be made within specified time frames, but also within what time limits greater percentages of first payments can reasonably be expected to be made. The Standard for Appeals Promptness, for example, prescribes one time frame for a given percentage of decisions issued, and a wider time frame for a greater percentage.

- Unlike the Appeals Promptness Standard, the proposed Benefit Payment Promptness Standard establishes less stringent criteria for first payments on interstate claims than apply to intrastate claims. This takes into account the fact that, unlike interstate benefit appeals which are heard and decided in the States by the same referees as intrastate appeals, interstate claims are processed and determined by separate organizational units in the States from those that process intrastate claims. It also recognizes the large volume of interstate claims which, historically, have uneven distribution, and have taken a substantially longer time to process than intrastate claims.

PERFORMANCE PLANS OF ACTION

The Standard is designed also to aid in identifying the precise cause of delay in the benefit payment processes and in determining the amount and type of resources and assistance that will be required to meet and maintain the required levels of performance. It requires submittal by a State, which has not met the criteria, of an annual performance plan showing how the State will operate so as to achieve the levels established by the criteria. Information concerning the structure and content of such plans will be contained in instructions issued after the standard takes effect.

COMMENTS ON PROPOSAL

Interested persons are invited to submit written data, views, or arguments on the proposal in this document, to the U.S. Department of Labor, Employment and Training Administration, Room 7000, Patrick Henry Building, 601 "D" Street, NW., Washington, D.C. 20213. All comments received on or before April 5, 1976, will be considered before taking action on the proposal. All comments received in response to this invitation will be available for public inspection during normal business hours at the foregoing address.

AUTHORITY FOR ISSUANCE

The amendment in this document is proposed under the authority of section 1102 of the Social Security Act (42 U.S.C. 1302) and Secretary's Order No. 4-75, dated April 16, 1975.

PROPOSED REGULATION

In consideration of the foregoing, it is proposed that a new Part 640 be added to Chapter V of Title 20, Code of Federal Regulations, to read as follows:

PART 640—STANDARD FOR BENEFIT PAYMENT PROMPTNESS—UNEMPLOYMENT COMPENSATION

- Sec.
- 640.1 Purpose and scope of the standard.
- 640.2 Federal law requirements.
- 640.3 Secretary's interpretation of Federal law requirements.
- 640.4 Secretary's Standard.
- 640.5 Criteria for State compliance.
- 640.6 Review of State compliance.
- 640.7 Annual Benefit Payment Performance Plan.

AUTHORITY: Sec. 1103 of the Social Security Act (42 U.S.C. 1302); Secretary's Order No. 4-75, dated April 16, 1975. Interpret and apply secs. 303(a) (1) and 303(b) (2) of the Social Security Act (42 U.S.C. 503(a) (1), 503(b) (2)).

§ 640.1 Purpose and scope of the Standard.

(a) *Purpose.* This Standard is responsive to the overriding concern of the United States Supreme Court in "California Department of Human Resources Development v. Java", 402 U.S. 121 (1971), and that of other courts with delays in the payment of unemployment compensation to eligible individuals. The Standard in this Part seeks to insure that unemployment compensation is paid to eligible individuals with the greatest promptness that is administratively feasible.

(b) *Scope.* The Standard specified in § 640.4 applies to all claims for unemployment compensation. The criteria for State compliance in §§ 640.5 apply to first payments of unemployment compensation to eligible claimants following the filing of initial claims and first compensable claims.

§ 640.2 Federal law requirements.

(a) *Conformity.* Section 303(a) (1) of the Social Security Act requires that a State unemployment compensation law include provision for—

Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) *Compliance.* Section 303(b) (2) of the Social Security Act provides that:

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) * * *

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State * * *.

§ 640.3 Secretary's interpretation of Federal law requirements.

(a) *Section 303(a) (1).* The Secretary interprets section 303(a) (1) of the Social Security Act to require that a State law include provision for such methods of administration as will reasonably insure the full payment of unemployment compensation to eligible claimants with the greatest promptness that is administratively feasible.

(b) *Section 303(b) (2).* The Secretary interprets section 303(b) (2) of the Social Security Act to require a State to comply substantially with the provision required by section 303(a) (1), as specified in paragraph (a) of this section.

§ 640.4 Secretary's Standard.

A State law will satisfy the requirement of section 303(a)(1), as specified in § 640.3(a), if, after September 30, 1976, it contains a provision requiring, or is construed to require, such methods of administration as will reasonably insure the full payment of unemployment compensation to eligible claimants with the greatest promptness that is administratively feasible.

§ 640.5 Criteria for State compliance.

A State will be deemed to comply substantially with the requirement set forth in § 640.4 if, for the fiscal year 1977, and for each fiscal year thereafter—

(a) It has issued 80 percent of first benefit payments on all intrastate claims within 14 days after the end of the first compensable week, and

(b) It has issued 60 percent of first benefit payments on all interstate claims within 14 days after the end of the first compensable week.

§ 640.6 Review of State compliance.

A State's compliance will be assessed for each fiscal year on a cumulative monthly basis from data reported monthly as required by sections 2600-2699, Part III, "Employment Security Manual."

§ 640.7 Annual Benefit Payment Performance Plan.

(a) *Fiscal year 1977.* Every State that has not, for the 12-month period ending on June 30, 1976, met the criteria specified in § 640.5, shall submit, no later than September 30, 1976, an Annual Benefit Payment Performance Plan of action showing how it will operate so as to meet those criteria beginning with the first quarter of fiscal year 1977.

(b) *Subsequent fiscal years.* No later than September 30, 1977, and the 30th day of September of each ensuing year, each State that has not, for the 12-month period ending the preceding June 30, met the criteria specified in § 640.5, shall submit an Annual Benefit Payment Performance Plan of action showing how it will operate so as to meet those criteria beginning with the next ensuing fiscal year.

Signed at Washington, D.C., on March 1, 1976.

WILLIAM H. KOLBERG,
Assistant Secretary for
Employment and Training.

[FR Doc. 76-6249 Filed 3-4-76; 8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[Petition No. PP 74-30]

[16 CFR Part 1700]

HUMAN PRESCRIPTION DRUGS IN ORAL DOSAGE FORMS

Proposed Exemption of Luride Drops (Sodium Fluoride) From Child-Protection Packaging Requirements

The purpose of this document is to propose exempting Luride Drops, an

aqueous solution preparation containing sodium fluoride, described below, from the provisions of 16 CFR 1700.14(a)(10) requiring child protection packaging for human prescription drugs in oral dosage forms.

BACKGROUND

In the FEDERAL REGISTER of April 16, 1973 (38 FR 9431), and under provisions of the Poison Prevention Packaging Act of 1970, the Commissioner of the Food and Drug Administration promulgated a regulation (21 CFR 295.2(a)(10)) establishing child protection packaging requirements for human prescription drugs in oral dosage forms, effective April 16, 1974.

In the document's preamble, the Commissioner announced that he would consider requests for exemptions from the packaging requirements and, if reasonable grounds were furnished, would publish proposed exemptions in the FEDERAL REGISTER.

Effective May 14, 1973, section 30(a) of the Consumer Product Safety Act (Pub. L. 92-573, 86 Stat. 1231; 15 U.S.C. 2079(a)) transferred functions under the Poison Prevention Packaging Act of 1970 to the Consumer Product Safety Commission.

Subsequently, on August 7, 1973 (38 FR 21247), the Consumer Product Safety Commission revised and transferred the regulations under the Poison Prevention Packaging Act of 1970 (21 CFR Part 295 became 16 CFR Part 1700). Accordingly, the amendment proposed below involves 16 CFR 1700.14(a)(10) instead of 21 CFR 295.2(a)(10).

EXEMPTION PETITION

On October 29, 1973, the Consumer Product Safety Commission received a petition (dated October 22, 1973) from the Davies Rose Hoyt Pharmaceutical Division of the Kendall Company, 633 Highland Avenue, Needham, Mass. 02194, requesting exemption of two of its human prescription drug products, Luride Drops and Thera-Flur Gel-Drops, from the child protection packaging requirements of 16 CFR 1700.14(a)(10).

Thera-Flur Gel-Drops is an aqueous solution containing 5 milligrams per milliliter of fluoride ion (from sodium fluoride) plus phosphate. For protection against dental caries, it is applied to the teeth by means of a custom-fitted plastic mouthpiece lined with 5 to 10 drops of the preparation. After treatment, the applicator is removed and the mouth thoroughly rinsed out. Since Thera-Flur is topically applied, the Commission finds that it is not a drug in a dosage form intended for oral administration and therefore is not subject to the packaging requirements of 16 CFR 1700.14(a)(10). Accordingly, exempting the product is not in question.

The product, Luride Drops, is an aqueous solution containing 3 milligrams per milliliter of fluoride ion (from sodium fluoride) plus coloring and flavoring agents. For protection against dental caries, the product is intended for ingestion. Accordingly, it is a human prescrip-

tion drug intended for oral administration and the question of its exemption from 16 CFR 1700.14(a)(10) is relevant.

GROUNDINGS FOR EXEMPTION

The petitioner states that the product, Luride Drops, is packaged in a plastic squeeze bottle with a special plug designed for drop-by-drop delivery each time the bottle is actuated. The content of each bottle is 40 milliliters containing 120 milligrams of fluoride ion from 264 milligrams of sodium fluoride. This conforms with the safety recommendation of the American Dental Association that no more than 264 milligrams of sodium fluoride be dispensed at one time. The petitioner also points out that Luride has been safely marketed for 14 years.

Responding to a CPSC request, the Food and Drug Administration has reviewed the petition and recommends exempting Luride Drops from the child protection packaging requirements. FDA bases its recommendation largely on the absence of injury reports despite an extensive marketing history of Luride Drops. Also, FDA states that the 264 milligrams of sodium fluoride in a bottle of Luride Drops is appreciably less than what scientific literature indicates is an acutely toxic dose.

CONCLUSION AND PROPOSAL

Having considered the petition, human experience data from the National Clearinghouse of Poison Control Centers, and other available information, and having consulted, pursuant to section 3, with the Technical Advisory Committee on Poison Prevention Packaging established in accordance with section 6 of the Poison Prevention Packaging Act of 1970, the Consumer Product Safety Commission concludes that an exemption covering Luride Drops in 40-milliliter bottles designed for drop-by-drop delivery should be proposed as set forth below.

The Commission's decision to propose the exemption is based principally on (1) the absence of reports of serious personal injury or serious illness involving the preparation which has been marketed for 14 years and (2) scientific literature's indication that accidental ingestion of 264 milligrams of sodium fluoride, the amount in a bottle of the preparation, would be less than a toxic or harmful amount for a 25-pound child.

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, secs. 2(4), 3, 5, 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14 be amended by adding a new paragraph (a)(10)(vii) as follows:

§ 1700.14 Substances requiring special packaging.

(a) . . .

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dis-